

House Bill 1322 (AS PASSED HOUSE AND SENATE)

By: Representatives Chambers of the 81st, Martin of the 47th, Powell of the 171st, and Teilhet of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 45-16-27 of the Official Code of Georgia Annotated, relating to
2 when inquest to be held, special situations, coroner's fee, issuance of subpoenas for books,
3 records, or papers, cost of copying, and limited disclosure of photographs, so as to provide
4 a short title; to provide for legislative findings; to provide that certain crime scene material
5 shall not be subject to the provisions of Article 4 of Chapter 18 of Title 50 of the Official
6 Code of Georgia Annotated; to provide for release to a victim's next of kin; to provide for
7 judicial action; to provide for notification; to provide for viewing of such material by the
8 press; to provide for applicability; to provide an effective date; to repeal conflicting laws; and
9 for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 This Act shall be known and may be cited as the "Meredith Emerson Memorial Privacy Act."

13 **SECTION 2.**

14 The General Assembly finds that photographs or video recordings of certain crime scene
15 photos depict the deceased in graphic and often disturbing fashion. Such photographs or
16 video may depict or describe the deceased nude, grossly dismembered, or decapitated. As
17 such photographs or video recordings are highly sensitive depictions of the deceased which,
18 if viewed, copied, or publicized, could result in trauma, sorrow, humiliation, or emotional
19 injury to the immediate family of the deceased, as well as injury to the memory of the
20 deceased. The legislature finds that the existence of certain publications and the Internet and
21 the proliferation of personal computers throughout the world encourages and promotes the
22 wide dissemination of photographs and video recordings 24 hours a day and that widespread
23 unauthorized dissemination of such images would subject the immediate family of the
24 deceased to continuous injury.

SECTION 3.

Code Section 45-16-27 of the Official Code of Georgia Annotated, relating to when inquest to be held, special situations, coroner's fee, issuance of subpoenas for books, records, or papers, cost of copying, and limited disclosure of photographs, is amended by adding a new subsection to read as follows:

"(e)(1) Crime scene photographs and video recordings, including photographs and video recordings created or produced by a state or local agency or by a perpetrator or suspect at a crime scene, which depict or describe a deceased person in a state of dismemberment, decapitation, or similar mutilation including, without limitation, where the deceased person's genitalia are exposed, shall not be subject to disclosure pursuant to Article 4 of Chapter 18 of Title 50; provided, however, that this subsection shall not prohibit disclosure of such material to the deceased's next of kin or to an individual who has secured a written release from the next of kin. It shall be the responsibility of the next of kin to show proof of the familial relationship. For purposes of such access, the deceased's next of kin shall be:

(A) The spouse of the deceased if living;

(B) If there is no living spouse of the deceased, an adult child of the deceased; or

(C) If there is no living spouse or adult child, a parent of the deceased.

(2) Subject to the provisions of paragraph (3) of this subsection, in the case of closed criminal investigations a superior court may order the disclosure of such photographs or video recordings upon findings in writing that disclosure is in the public interest and outweighs any privacy interest that may be asserted by the deceased person's next of kin. In making such determination, the court shall consider whether such disclosure is necessary for public evaluation of governmental performance, the seriousness of the intrusion into the family's right to privacy, and whether such disclosure is the least intrusive means available considering the availability of similar information in other public records. In any such action, the court shall review the photographs in question in camera with the custodian of crime scene materials present and may condition any disclosure on such condition as the court may deem necessary to accommodate the interests of the parties.

(3) Prior to releasing any crime scene material described in paragraph (1) of this subsection, the custodian of such material shall give the deceased person's next of kin at least two weeks' notice. No court shall order a disclosure pursuant to paragraph (2) of this subsection which would disregard or shorten the duration of such notice requirement.

(4) The provisions of this subsection shall apply to all undisclosed material which is in the custody of a state or local agency on the effective date of this subsection and to any such material which comes into the custody of a state or local agency after such date.

(5) This subsection shall not apply to disclosure of crime scene material to counsel representing a convicted defendant in a habeas corpus action pursuant to Chapter 14 of Title 9, on an extraordinary motion for new trial under Code Section 5-5-40 or 5-5-41, or in a federal habeas corpus action under Section 2254 or 2255 of Title 28 of the United States Code for the purpose of preparing to file or litigating such proceedings. Counsel may disclose such materials to his or her client and any expert or investigator assisting counsel but shall not otherwise disseminate such materials, except to the extent they may be necessary exhibits in court proceedings. A request pursuant to this paragraph shall clearly state that such request is being made for the purpose of preparing to file and litigate proceedings enumerated in this paragraph.

(6) The director of the Georgia Bureau of Investigation and the Board of Public Safety shall promulgate rules and regulations governing the viewing of materials described in paragraph (1) of this subsection by bona fide credentialed members of the press."

SECTION 4.

This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval.

SECTION 5.

All laws and parts of laws in conflict with this Act are repealed.